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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,709	10/01/2001	Felice Fragola	2865-360	7019

7590                    03/13/2003  
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EXAMINER

NGO, LIEN M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/937,709	FRAGOLA, FELICE
	Examiner	Art Unit
	LIEN TM NGO	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 01 October 2001.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-46 is/are pending in the application.

4a) Of the above claim(s) 5-12 and 19-46 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4 and 13-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. The drawing does not show the cross section symbolic of a plastic as set forth in claim 1 and 3; and barrier means. Therefore, the plastic material and the barrier means must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the proper cross section of the covering body and sealing means in cross section symbolic of foam elastomeric or plastic as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because the same reference character has been used to designate different embodiment. A proposed drawing

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correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Specification*

4. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
5. Claims 5-12 and 19-46 are objected to under 37 CFR 1.75© as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and/or can not depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 5-12 and 19-46 have not been further treated on the merits.

*Claim Rejections - 35 USC § 112*

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-4 and 13-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 14, the word "means" is preceded by the word(s) "sealing" and "barrier" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding

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"means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Regarding claims 16-18, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claim 13, it can not be defined what is "under optimum conditions".

#### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.  
(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

9. Claims 1-4 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Noel et al.

(5,904,965). Noel et al. disclose, in figs.1 and 2, a closure for a container comprising a rigid supporting and sealing means 22, a cover body 24 made of elastomeric material (see col. 11, lines 58-65) that place on the outside around the supporting and sealing means.

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10. Claims 1-4, 13-15, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lauder et al. (6,221,451). Lauder et al. disclose, in figs.1 and 2, a closure for a container comprising a rigid supporting and sealing means 22, a cover body 24 made of elastomeric material (see col. 14, lines 19-32) that place on the outside around the supporting and sealing means. The closure may comprise with barrier layer, for example glass (see col. 16, lines 19-25 and 50-56).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lauer et al. in view of McTee et al.. Luer et al. do not disclose the barrier means comprising gold.

McTee et al. teach, in col. 6, lines 1-10, a plug comprising barrier means with gold.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the barrier means of Lauer et al. closure with gold, as taught by McTee et al., in order to reduce the possibility of the oxidation.

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***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Haber et al., Grittman, Spinks, Blumer, Morehouse, Heard, Bonwick, <sup>Murray,</sup> Porvaznik, and Ames teach stopper plugs having supporting and sealing means with covering bodies.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Ngo whose telephone number is (703) 305-0294. The examiner can normally be reached Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Lee Young, can be reached at (703)308-2572. The Group FAX number is (703) 305-3579.

Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-1148.

*W*  
Lien Ngo

March 7, 2003

*Lee Young*  
LEE YOUNG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700